

AMENDED IN ASSEMBLY MARCH 18, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1841**

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**Introduced by Assembly Member Buchanan**

February 12, 2010

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An act to amend ~~Section 56346~~ Sections 56021.1 and 56346 of the Education Code, relating to special education.

LEGISLATIVE COUNSEL'S DIGEST

AB 1841, as amended, Buchanan. Special education: parental consent.

~~Existing~~

*(1) Existing law, in defining the term "consent" for purposes of the provision of special education and related services to individuals with exceptional needs, includes in that definition a statement that a parent or guardian understands that granting consent is voluntary and he or she may revoke that consent at any time. Existing law provides that revocation of consent is not retroactive to negate an action that occurred after consent was given and prior to the revocation.*

*This bill, in addition, would provide that a public agency is not required to amend the education records of a child to remove any reference to the child's receipt of special education and services if the child's parent or guardian submits a written revocation of consent after the initial provision of special education and related services to the child.*

*(2) Existing law requires a local educational agency that is responsible for ~~making~~ providing a free appropriate public education and related services to a child with a disability to make reasonable efforts to obtain informed consent from the parent of the child before providing special education and related services to the child, as specified. Existing law*

requires a local educational agency to file a request for due process, as specified, if the parent or guardian of a child who is an individual with exceptional needs refuses all services in the individualized education program after having consented to those services in the past.

This bill would delete that latter requirement and, pursuant to a specified federal regulation, instead would prohibit a public agency, in the event that the parent or guardian of a child submits a written revocation of his or her consent at any time subsequent to the initial provision of special education and related services to the child, from continuing to provide special education and related services to the child or from using specified procedural safeguards to obtain agreement or a ruling that the services may be provided to the child. The bill would require the public agency to provide prior written notice, as specified, before ceasing the provision of the special education and related services. The bill would require that a public agency be deemed in compliance with the requirement to make a free appropriate public education available to a child if the agency ceases to provide the child with further special education and related services pursuant to these provisions. The bill would provide that a public agency is not required to convene an individualized education program team meeting or develop an individualized education program for the child for further provision of special education and related services.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 56021.1 of the Education Code is amended*  
2     *to read:*  
3     56021.1. “Consent,” as provided in Section 300.9 of Title 34  
4     of the Code of Federal Regulations, means all of the following:  
5     (a) The parent or guardian has been fully informed of all  
6     information relevant to the activity for which consent is sought,  
7     in his or her native language, or other mode of communication.  
8     (b) The parent or guardian understands and agrees in writing to  
9     the carrying out of the activity for which his or her consent is  
10    sought; and the consent describes that activity and lists the records,  
11    if any, that will be released and to whom.  
12    (c) The parent or guardian understands that the granting of  
13    consent is voluntary on the part of the parent or guardian and may

1 be revoked at any time. If a parent or guardian revokes consent,  
2 that revocation is not retroactive to negate an action that has  
3 occurred after the consent was given and before the consent was  
4 revoked. *A public agency is not required to amend the education*  
5 *records of a child to remove any reference to the child's receipt*  
6 *of special education and services if the child's parent or guardian*  
7 *submits a written revocation of consent after the initial provision*  
8 *of special education and related services to the child.*

9 **SECTION 1.**

10 **SEC. 2.** Section 56346 of the Education Code is amended to  
11 read:

12 56346. (a) A public agency that is responsible for making a  
13 free appropriate public education and related services to the child  
14 with a disability under this part shall seek to obtain informed  
15 consent from the parent of the child before providing special  
16 education and related services to the child pursuant to Section  
17 1414(a)(1)(D)(i)(II) of Title 20 of the United States Code. The  
18 public agency shall make reasonable efforts to obtain informed  
19 consent from the parent for the initial provision of special education  
20 and related services to the child in accordance with Section  
21 300.300(b)(2) of Title 34 of the Code of Federal Regulations.

22 (b) If the parent of the child fails to respond or refuses to consent  
23 to the initiation of services pursuant to subdivision (a), the public  
24 agency shall not provide special education and related services to  
25 the child by utilizing the procedures in Section 1415 of Title 20  
26 of the United States Code or the procedures in subdivision (e) of  
27 Section 56506 in order to obtain agreement or a ruling that the  
28 services may be provided to the child.

29 (c) If the parent of the child refuses to consent to the initial  
30 provision of special education and related services, or the parent  
31 fails to respond to a request to provide the consent, both of the  
32 following are applicable:

33 (1) The public agency shall not be considered to be in violation  
34 of the requirement to make available a free appropriate public  
35 education to the child for the failure to provide the child with the  
36 special education and related services for which the public agency  
37 requests consent.

38 (2) The public agency shall not be required to convene an  
39 individualized education program team meeting or develop an  
40 individualized education program under this part for the child for

1 the special education and related services for which the public  
2 agency requests consent.

3 (d) (1) Pursuant to Section 300.300(b)(4) of Title 34 of the  
4 Code of Federal Regulations, if the parent or guardian of a child  
5 submits a written revocation of his or her consent pursuant to this  
6 section at any time subsequent to the initial provision of special  
7 education and related services to the child, the public agency shall  
8 not do either of the following:

9 (A) Continue to provide special education and related services  
10 to the child, but shall provide prior written notice in accordance  
11 with Section 56500.4 before ceasing the provision of the special  
12 education and related services.

13 (B) Use the procedural safeguards specified in Chapter 5  
14 (commencing with Section 56500), including mediation and the  
15 due process complaint procedures, to obtain agreement or a ruling  
16 that the services may be provided to the child.

17 (2) A public agency shall be deemed in compliance with the  
18 requirement to make a free appropriate public education available  
19 to a child if the agency ceases to provide the child with further  
20 special education and related services pursuant to this subdivision.  
21 A public agency is not required to convene an individualized  
22 education program team meeting or develop an individualized  
23 education program pursuant to this article for the child for further  
24 provision of special education and related services.

25 (e) If the parent of the child consents in writing to the receipt  
26 of special education and related services for the child but does not  
27 consent to all of the components of the individualized education  
28 program, those components of the program to which the parent  
29 has consented shall be implemented so as not to delay providing  
30 instruction and services to the child.

31 (f) With the exception of a parent of a child who fails to respond  
32 pursuant to subdivision (b), or refuses to consent to services  
33 pursuant to subdivision (b), if the public agency determines that  
34 the proposed special education program component to which the  
35 parent does not consent is necessary to provide a free appropriate  
36 public education to the child, a due process hearing shall be  
37 initiated in accordance with Section 1415(f) of Title 20 of the  
38 United States Code. If a due process hearing is held, the hearing  
39 decision shall be the final administrative determination and shall  
40 be binding upon the parties. While a resolution session, mediation

1 conference, or due process hearing is pending, the child shall  
2 remain in his or her current placement, unless the parent and the  
3 public agency agree otherwise.

4 (g) In accordance with Section 300.300(d)(4)(i) of Title 34 of  
5 the Code of Federal Regulations, if the parent of a child who is  
6 home schooled or placed in a private school by the parents at their  
7 own expense does not provide consent for the initial assessment  
8 or the reassessment, or the parent fails to respond to a request to  
9 provide consent, the public agency shall not use the consent  
10 override procedures described in Section 300.300(a)(3) and (c)(1)  
11 of Title 34 of the Code of Federal Regulations. The public agency  
12 is not required to consider the child as eligible for services under  
13 Article 5.6 (commencing with Section 56170) of Chapter 2.